



**Lebanon Municipal Code Title 16: Development Code**

**Article Five: Exceptions To Code Standards**

**Chapter 16.30: Non-Conforming Uses and Developments, and Lots of Record**

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## Chapter 16.30: Non-Conforming Uses and Lots of Record

### 16.30.010 PURPOSE

It is the purpose of the provisions of this Chapter to permit pre-existing uses and structures that do not conform to the use or dimensional standards of this Development Code to continue under conditions specified herein<sup>1</sup>. However, the alteration or expansion of a non-conforming use or structure that would have an adverse effect on the immediate neighborhood or in the City as a whole, is not permitted except as outlined in this Chapter.

### 16.30.020 CONTINUATION OF A NONCONFORMING USE

- A. Subject to the provisions of this Chapter, a nonconforming use of a structure (including fences) or a nonconforming use may be continued and maintained , but shall not be altered or expanded except as provided herein.
- B. The extension of a nonconforming use to a portion of a structure that was approved for such a use at the time of the adoption of this Development Code is not an expansion of a nonconforming use.
- C. In any industrial or commercial zone, a pre-existing dwelling may be altered or expanded, provided that such alteration or expansion shall not exceed the yard, lot coverage, and building height requirements of the Residential Mixed Density (RM) Zone for the use of the property.
- D. Notwithstanding the provisions of Section 16.30.030, a nonconforming structure reasonably capable of use only for a nonconforming industrial or commercial use may be re-established, changed, altered, or expanded upon as a Conditional Use.

### 16.30.030 NONCONFORMING STRUCTURE

A structure (including fences) conforming as to use but nonconforming as to height, setback, lot coverage, or similar dimensional standard, may be altered or expanded if the alteration or expansion does not cause the structure to deviate further from the standards of this Development Code, and provided that such redevelopment meets all other applicable standards.

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<sup>1</sup> The continuance of non-conforming uses and/or structures does not apply to property that is being annexed into the City. The City may require the abatement of non-conforming uses and/or structures prior to hearing an annexation request (see Chapter 16.26). Other provisions of this Code and the Lebanon Municipal Code may require abatement of certain kinds of situations before an annexation request can be approved.

### **16.30.040 DISCONTINUANCE OR ABANDONMENT OF NONCONFORMING USES<sup>2</sup>**

- A. If a nonconforming use, whether or not it involves a structure, is discontinued from active use for a period of one (1) year or more, further use of the property shall be for a conforming use.
- B. For purposes of calculating the one-year period, a use is discontinued or abandoned upon the occurrence of the first of any of the following events:
  - 1. On the date when the use of land is physically vacated.
  - 2. On the date the use ceases to be actively involved in the sale of merchandise or the provision of services.
  - 3. On the date of termination of any lease or contract under which the nonconforming use has occupied the land.
  - 4. On the date a request for final reading of water and power meters is made to the applicable utility districts.

### **16.30.050 CHANGE OF A NONCONFORMING USE**

If a nonconforming use is changed, it shall be changed to a use conforming to the regulations of the zone in which it is located.

### **16.30.060 DESTRUCTION OF A NONCONFORMING USE OR STRUCTURE**

If more than 50% of the square footage of a nonconforming structure or a structure containing a nonconforming use is destroyed by any cause (excluding intentional demolition of an undamaged building), a future structure or use on the site shall comply with the following:

- A. Non-Residential Uses: The new use shall comply with the provisions of the zone in which the property is located, or the property owner may apply for approval through an **Administrative Review process** to continue with the existing nonconforming use and/or to replace the nonconforming structure in its present location. Approval to replace the damaged structure shall not allow the replacement or repaired structure to be more nonconforming than it was originally. Such repairs or replacements must meet current building codes.
- B. Residential Uses: A nonconforming residential use may be replaced provided construction of the replacement dwelling is lawfully commenced within one year of the damage or destruction.

### **16.30.070 REPAIRS AND MAINTENANCE**

Any nonconforming structure or a structure containing a nonconforming use may be maintained or restored to conform with the standards of the building code, including repair or replacement of fixtures, wiring, or plumbing, provided the maintenance or restoration does not cause the structure to deviate further from the standards of this Development Code, and provided that such redevelopment meets all other applicable standards.

### **16.30.080 COMPLETION OF STRUCTURE**

Nothing contained in this Development Code shall require any change in the plans, construction, alteration, or designated use of a structure for which a building permit has been lawfully issued and construction has commenced prior to adoption of this Development Code, provided the

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<sup>2</sup> The burden of proof is on the applicant.

structure, if nonconforming or intended for a nonconforming use, is substantially completed and in use.

### **16.30.090 NONCONFORMING LOT OF RECORD**

The purpose of this Section is to establish criteria and a process for determining when a lot of record exists. A “lot of record” is a lot or parcel that was lawfully created according to the standards in effect at the time it was created, as described in Section 16.30.090.B below.

#### **A. Lot of Record**

In any Land Use Zone, notwithstanding limitations imposed by other provisions of this Code, permitted (by any listed decision/decision process) principal uses and structures, and accessory buildings may be erected on any single lots of record after the effective date of adoption of this Development Code. This provision shall apply even though such lot fails to meet the lot dimension requirements for the applicable Land Use Zone.

#### **B. Decision Criteria**

In order to qualify as a nonconforming lot of record for purposes of this Code, the lot or parcel shall conform to all zoning requirements, partition or subdivision requirements, and Comprehensive Plan provisions, *if any*, in effect on the date when an approved plat was recorded or a recorded deed or contract creating the separate lot or parcel was signed by the parties to the deed or contract.

#### **C. Procedure**

A lot of record determination shall be made by the Planning Official using the Ministerial Decision Procedure (see Chapter 16.20). It shall be the property owner’s responsibility to demonstrate that the subject property meets the lot of record decision criteria listed in Subsection 16.30.090.B above.

#### **D. Permitted Development**

A lot of record shall be entitled to a use identified in the underlying zone provided the use complies with the applicable development requirements, unless otherwise modified by variance approval. This provision does not waive compliance with land use review procedures.

### **16.30.100 DETERMINATION OF NONCONFORMING STATUS**

Determination of nonconforming status shall be processed as a Code Interpretation according to the provisions of Chapters 16.20 and 16.25 of this Code.

### **16.30.110 EXCEPTIONS FOR HISTORIC STRUCTURES AND LAND USES**

Historic uses, structures and sites shall be exempted from the above provisions (16.30.020 thru 16.30.100) of this Chapter if it is listed as a **Historic Resource of Statewide Significance**, is on the **National Register of Historic Places**, or is on The City of Lebanon’s **Inventory of Historic Resources**. See Chapter 16.31 (Historic Preservation Standards and Requirements) of this Code for further details and explanations of how structures and sites may become listed as an historic resource.